IN THE HIGH COURT OF JUDICATURE AT BOMBAY
IN INSOLVENCY

INSOLVENCY PEITION NO.106 OF 2005

Ravi H. Panchamatia. ...Petitioning Creditor.

Versus

D.V. Sathe. ...Debtor.

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Mr. H. V. Chande for the Petitioning Creditor.
Mr. P. C. Kansara for the Debtor.

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CORAM : DR. D.Y. CHANDRACHUD, J.
October 17, 2006.

P.C.:

The Insolvency Petition is based on a judgment and decree dated 10th February 2003 passed against the Debtor in Suit No.1704 of 2000. An Insolvency Notice was issued on 10th December 2004 which was served on the Debtor on 24th February 2005. The Debtor took out a Notice of Motion for setting aside the Insolvency Notice. The motion was dismissed on 3rd May 2005 and the order of this Court dismissing the Motion is stated to have been affirmed in appeal by the Division Bench. The act of insolvency was complete on 3rd May 2005.

The Debtor has been served with the Insolvency Petition in January 2006. No affidavit in reply has been filed. On 3rd

October 2006, the hearing of the Petition was adjourned to 17th October 2006. No reply has been filed to the Insolvency Petition.

The submission that has been urged at the Bar is that the Company was declared as a sick industrial Company under the provisions of the Sick Industrial Companies (Special Provisions) Act, 1985 and that the Debtor as a Guarantor is entitled to the benefit of Section 22(1).

The Debtor is the acceptor of the Bill of Exchange. The liability of an acceptor is primary in nature. Against the decree that was passed in the Summary Suit which was instituted on a Bill of Exchange, an appeal was admitted on 8th December 2005 and a stay was granted conditional on a deposit of the decretal amount within the stipulated period. The Plaintiff to the suit was granted liberty to execute the decree if the amount was not deposited. It is an undisputed position that the amount was not deposited upon which the decree became executable. The Insolvency Notice and now the petition are founded on the decree of this Court in the Summary Suit. The liability of the Debtor as an acceptor of the Bill of Exchange is not affected by the provisions of Section 22(1) of

the Sick Industrial Companies (Special Provisions) Act, 1985. In these circumstances, there is no merit in the defence which was sought to be urged in the course of the oral submission of Counsel appearing on behalf of the Debtor. An order of adjudication would have to be passed and is accordingly passed. The Petition is made absolute in terms of prayer clauses (a) and (b).

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